

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

MICHAEL REILLY,
WILLIAM COULMAN and
JASON RAMSDELL
on behalf of themselves and
all others similarly situated,

Plaintiffs,

Case No. 18-cv-315-jdp

v.

CENTURY FENCE COMPANY,

Defendant.

DEFENDANT’S RULE 12(b)(6) MOTION TO DISMISS

NOW COMES Defendant, Century Fence Company (“Century”), by its undersigned counsel and, pursuant to Rule 12(b)(6), Federal Rules of Civil Procedure, moves the Court to dismiss the following two claims on the grounds set forth below and in Century’s Brief in Support of Rule 12(b)(6) Motion to Dismiss.

1. Plaintiffs, in their First Amended Complaint, and as clarified in their Motion for Conditional Certification, allege that Century violated the Fair Labor Standards Act (“FLSA”) by failing to pay overtime on the cash in lieu of fringe benefits component of the prevailing wage rate. Because federal, as well as Wisconsin law, makes clear that cash paid in lieu of fringe benefits is not part of the regular rate for purposes of calculating overtime, this claim fails as a matter of law.

2. Plaintiffs, in their First Amended Complaint, and as clarified in their Motion for Conditional Certification, allege that Century violated the FLSA by failing to pay “double

overtime”. Century paid daily overtime on hours worked over eight in a day. Under established federal law, Century is entitled to take a credit against all premium pay which Century paid for hours worked over eight in a day when calculating weekly overtime liability. Plaintiffs’ double overtime claim fails as a matter of law.

3. The present motion is supported by Century’s Brief in Support of Rule 12(b)(6) Motion to Dismiss.

WHEREFORE, on the basis of the argument and authority set forth in Century’s Brief in Support of Rule 12(b)(6) Motion to Dismiss, the Court should dismiss, with prejudice, Plaintiffs’ cash in lieu of fringe benefits overtime claim and Plaintiffs’ double overtime claim.

Dated: October 18, 2018

AXLEY BRYNELSON, LLP

s/ Michael J. Modl

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